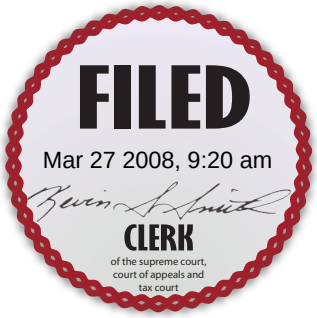

ATTORNEY FOR APPELLANT:

J. DIRK CARNAHAN
Vincennes, Indiana

ATTORNEY FOR APPELLEE:

SHAWNA D. WEBSTER
Webster & Webster, LLC
Vincennes, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JODIE R. PATRICK,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 42A01-0708-CV-400
	)	
BRIAN T. PATRICK,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0502-DR-016

March 27, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jodie R. Patrick ("Mother") appeals the order of the Knox Superior Court granting the petition of Brian T. Patrick ("Father") to modify custody of the Patricks' child, B.P. On appeal, Mother claims that the trial court abused its discretion in modifying custody based upon Mother's plan to move out of state. We affirm.

Facts and Procedural History

Mother and Father were married on August 21, 1999, and lived in Vincennes, Indiana. The marriage produced one child, B.P., who was born on June 9, 2000. B.P. lived with both Mother and Father until they divorced in 2005. The dissolution of the marriage was accomplished by the parties entering into a settlement agreement, which the trial court approved on March 14, 2005. Pursuant to the settlement agreement, the parties were to share joint legal custody of B.P., with Mother having primary physical custody.

Following the divorce, B.P. lived with Mother and Mother's three older daughters from a previous marriage. B.P. enjoyed a good relationship with both of her parents. Even though he was the non-custodial parent, Father maintained a very close relationship with B.P., frequently spending additional time with his daughter outside of the court-ordered visitation. B.P. had spent her entire life in Vincennes and had developed close relations with her relatives on both sides of the family in the Knox County area. At school, B.P. was a star pupil and was quite involved with extra-curricular activities as well.

On December 11, 2006, Mother filed a pro se notice of intent to relocate to Glasford, Illinois to live with her new fiancé. In response, Father filed an objection to the proposed relocation and a motion for a custody hearing, seeking to have primary physical

custody of B.P. transferred to him if Mother moved to Illinois. Following Mother's plans to move to Illinois, B.P. began to experience physically unexplained headaches and stomach aches. She also became socially withdrawn at school, often refusing to leave her teacher's side. On June 6, 2007, the trial court held a hearing on Father's motions, including an *in camera* interview with B.P. On August 7, 2007, the trial court entered an order awarding primary physical custody of B.P. to Father so that B.P. could remain in Vincennes. Mother now appeals.

Discussion and Decision

Mother challenges the propriety of the trial court's order modifying custody. In reviewing this claim, we observe that the modification of a custody order lies within the sound discretion of the trial court. Bettencourt v. Ford, 822 N.E.2d 989, 997 (Ind. Ct. App. 2005). As such, we review custody modifications only for an abuse of discretion, with a preference for granting latitude and deference to the trial court in family law matters. Id. Judgments in custody matters usually turn on essentially factual determinations and will be set aside only when they are "clearly erroneous." Baxendale v. Raich, 878 N.E.2d 1252, 1257 (Ind. 2008). We will not reverse the trial court's judgment if any evidence or legitimate inferences support the trial court's judgment. Id. at 1257-58. "The concern for finality in custody matters reinforces this doctrine." Id. at 1258. Upon appeal, it is not enough that the evidence might have supported some other conclusion; instead, before there is a basis for reversal, the evidence must positively require the other conclusion. Bettencourt, 822 N.E.2d at 997.

Initial custody determinations are governed by Indiana Code section 31-17-2-8 (1998 & Supp. 2007), which lists several factors for the court to consider in determining custody in accordance with the best interests of the child. Modification of a custody order is governed by Indiana Code section 31-17-2-21 (1998 & Supp. 2007). Generally speaking, the trial court may not modify a child custody order unless: (1) the modification is in the best interests of the child, and (2) there is a substantial change in one or more of the factors that the court is to consider under Section 8.

In 2006, our General Assembly added to the Family Law Title of the Indiana Code an entire chapter concerning the relocation of a custodial parent. See Ind. Code ch. 31-17-2.2 (Supp. 2007). This new chapter was recently summarized by our Supreme Court in Baxendale v. Raich, 878 N.E.2d 1252 (Ind. 2008):

> "Relocation" is "a change in the primary residence of an individual for a period of at least sixty (60) days," and no longer requires a move of 100 miles or out of state. Id. § 31-9-2-107.7. A "relocating individual" is someone who "has or is seeking: (1) custody of a child; or (2) parenting time with a child; and intends to move the individual's principal residence." Id. § 31-9-2-107.5. A "nonrelocating parent" is someone "who has, or is seeking: (1) custody of the child; or (2) parenting time with the child; and does not intend to move the individual's principal residence." Id. § 31-9-2-84.7. Upon motion of either parent, the court must hold a hearing to review and modify custody "if appropriate." Id. § 31-17-2.2-1(b). In determining whether to modify a custody order, the court is directed to consider several additional factors that are set out in section 31-17-2.2-1(b) and are specific to relocation. In general, the court must consider the financial impact of relocation on the affected parties and the motivation for the relocation in addition to the effects on the child, parents, and others identified in Section 8 as relevant to every change of custody.

Id. at 1255-56 (footnotes omitted).

Under Chapter 2.2, there are two ways to object to a proposed relocation: a motion to modify a custody order under Indiana Code section 31-17-2.1-1(b), and a motion to prevent the relocation of a child under Indiana Code section 31-17-2.2-5(a). See Baxendale, 878 N.E.2d at 1256 n.5. If the non-relocating parent does not file a motion to prevent relocation, then the relocating parent with custody of the child may relocate. Id. If the non-relocating parent does file a motion to prevent relocation, then the relocating parent must first prove that "the proposed relocation is made in good faith and for a legitimate reason." Id. (quoting I.C. § 31-17-2.2-5(c)). If this burden is met, then the non-relocating parent must prove that "the proposed relocation is not in the best interests of the child." Id. (quoting I.C. § 31-17-2.2-5(d)). Under either a motion to prevent relocation or a motion to modify custody, if the relocation is made in good faith (as the trial court here found to be the case) "both analyses ultimately turn on the 'best interests of the child.'" Id.

As Baxendale held, Indiana Code section 31-17-2-21 does not require that a change in one of the original Section 8 factors be found before a change in custody may be ordered after a relocation. Id. at 1256-57. Under Chapter 2.2, a relocation may or may not have significant effects on the child's best interest and therefore may or may not warrant a change of custody. Indeed, "the fact of relocation alone does not of itself require a change in custody. However, the circumstances surrounding a relocation can create substantial changes for the child, including changes in the factors described in Section 8 and also those provided by [Chapter 2.2]." Id. at 1258.

Here, although it appears that B.P. was close to her Mother, she was also close with her Father, even though he was the non-custodial parent. Father frequently spent time with his daughter even when he did not have visitation. Father was involved in B.P.'s schooling and her extra-curricular activities. Father attended all of B.P.'s field trips and, in contrast to Mother, all of her parent-teacher conferences. Further, B.P. has lived her entire life thus far in Vincennes and has developed close relations with both sides of her family in Knox County. B.P. was very well adjusted at her school, having many friends and being an excellent student. In fact, B.P.'s school principal described her as one of the school's "shining star[s]." Tr. p. 57. She was also a member of student council and the Junior Great Books reading program. Before Mother announced her proposed relocation, B.P. was also an outgoing child at school. However, as the Mother's proposed relocation became an issue, B.P.'s behavior changed. She began to complain of stomach aches, for which doctors found no physical cause, and she became "clingy" to her teacher.

From this evidence, the trial court concluded that it would be in the best interests of B.P. to remain in Vincennes with her Father, family, school, and friends, and not relocate in Illinois with Mother. Although Mother argues that B.P. could still maintain contact with Father through visitation, the same can be said regarding Mother's ability to maintain her relationship with her daughter once she moves to Illinois. The trial court was faced with two options, both of which would disrupt B.P.'s life to a greater or lesser extent. By choosing to have B.P. remain in Vincennes with her Father, the trial court chose what it felt was the least disruptive option. This is not to say that this is the only

conclusion that the trial court could have reached, but we cannot say that the trial court erred in reaching the conclusion that it did.

Mother emphasizes all of the evidence which favors her position and ignores the facts favorable to the trial court's decision. In other words, she simply asks us to look at the evidence favorable to her position and come to a conclusion different than that reached by the trial court. This is not within our prerogative as an appellate court. See Bettencourt, 822 N.E.2d at 997. Looking at the evidence favorable to the trial court's decision, we conclude that the trial court's decision was well within its discretion. We therefore affirm the judgment of the trial court.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.